

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Bruce Woods,
Petitioner

vs

Case No. 1:00cv803
(Spiegel, J.; Black, M.J.)

Wanza Jackson,
Respondent

ORDER

Petitioner, an inmate in state custody at the Warren Correctional Institution in Lebanon, Ohio, has filed through counsel a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 20, 2004, the United States Court of Appeals for the Sixth Circuit vacated the District Court's dismissal of the petition on statute of limitation grounds pursuant to 28 U.S.C. § 2244(d), remanding the case to the district court "to develop the factual record regarding Woods' entitlement to equitable tolling." (Doc. 39). On March 9, 2004, the District Judge referred this matter to the Magistrate Judge "to hold an evidentiary hearing to develop the factual record as contemplated by the Sixth Circuit's order remanding the case." (Doc. 40). On June 5, 2004, this Court granted, in part, the parties motions to conduct discovery to develop the record regarding petitioner's entitlement to equitable tolling of the one year statute of limitations. (Doc. 53).

To further the resolution of this action and determine whether an evidentiary hearing remains necessary, within fifteen (15) days of the date of this Order, the parties are hereby **ORDERED**:

1. to inform the Court as to the status of discovery;
2. to expand the record through, for example, the affidavit of petitioner or the affidavit or deposition of trial counsel and other documents which bear on the equitable tolling issue pursuant to Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254;¹ and
3. to state their position as to whether there are material facts in dispute which require an evidentiary hearing and if so, identify those facts and what evidence would be adduced at a hearing.

IT IS SO ORDERED.

Date: November 19, 2004
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s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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¹The need for an evidentiary hearing may be obviated or may be demonstrated by expansion of the record under Rule 7. *See Boyco v. Parke*, 259 F.3d 781, 790 (7th Cir. 2001) (and cases cited therein).